

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

WEST PALM BEACH DIVISION

OAK FOREST PRODUCTS, INC., a
Florida Corporation,

Plaintiff,

Case No.:

vs.

HISCOCK & BARCLAY, LLP, a New
York Limited Liability Partnership and
THOMAS R. FITZGERALD,
individually,

Defendants.

/

DEFENDANT HISCOCK & BARCLAY, LLP'S NOTICE OF REMOVAL

Defendant HISCOCK & BARCLAY, LLP, ("H&B"), a New York Limited Liability Partnership, hereby gives notice pursuant to 28 U.S.C. §§ 1332(a)(1), 1338(a) and 28 U.S.C. §§ 1441 and 1446, that the case entitled *Oak Forest Products, Inc. v. Hiscock & Barclay, et al*, Case No. 12-46-CA – Metzger, is being removed from the Circuit Court of the Nineteenth Judicial Circuit, in and for Martin County, Florida to the United States District Court for the Southern District of Florida. In support of this Notice, H&B states:

1. On or about January 10, 2012, Plaintiff, OAK FOREST PRODUCTS, INC. ("OAK FOREST"), commenced this action against Defendants in the Circuit Court of the Nineteenth Judicial Circuit in and for Martin County, Florida under the caption of *Oak Forest Products, Inc. v. Hiscock & Barclay, LLP et al*, Case No. 12-46-CA –Metzger. A copy of the Summons and Complaint filed in state court, attached collectively as Exhibit "A," constitute all process, pleadings, discovery and orders served by Plaintiff upon H&B in this action to date.

2. Plaintiff Oak Forest, is a Florida Corporation. *See* Complaint, Exhibit A, ¶3.

3. Defendant H&B is a New York Limited Liability Partnership. H&B does not have any offices in the State of Florida. *See*, Complaint, Exhibit A, ¶4

4. Defendant Thomas R. Fitzgerald is a citizen and resident of the State of New York. *See* Complaint, Exhibit A, ¶6.

5. The causes of action in Plaintiff's Complaint are based on claims of legal malpractice allegedly occurring in connection with the underlying issues raised in an action which was recently dismissed in the United States District Court for the Western District of New York and captioned *Oak Forest Products, Inc. v. Home Depot USA, Inc. and King of Fans, Inc.*, Case No. 08-CV-6531.

6. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332(a)(1) and 1338(a) as the lawsuit involves citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and it sets forth a claim for relief requiring resolution of substantive issues of patent and copyright law. That amount at issue is based upon Oak Forest's allegations in the Complaint that it seeks damages for copyright infringement, patent infringement, lost profits, royalties, attorney's fees and costs, and prejudgment interest. Oak Forest seeks such damages for actions which commenced either in 2003 or 2008. *See* Complaint, Exhibit A, ¶¶27, 34, 50 and 62. Under the Federal Court Jurisdiction and Venue Clarification Act of 2011, §103, where Plaintiff has not specified an amount of damages, a defendant may state the amount in controversy in its Notice of Removal;

8. For purposes of Removal, venue is proper in the United States District Court, Southern District of Florida, Miami Division, pursuant to 28 U.S.C. § 1441(a) because the case is removed from the Circuit Court in and for Martin County, Florida.

9. The Complaint consists of two counts of legal malpractice involving patent litigation.

10. Defendant Thomas R. Fitzgerald consents to this removal. *See*, Affidavit of Mr. Fitzgerald, attached hereto as Exhibit B.

11. This action is being removed within thirty (30) days of service of the Complaint upon H&B. *See*, Summons, attached hereto as part of Exhibit A.

12. A copy of this Notice has been filed contemporaneously with the Clerk of the Circuit Court in and for Martin County, Florida, and has been served on Plaintiff.

WHEREFORE, Defendant, HISCOCK & BARCLAY, LLP respectfully gives Notice of Removal of the action, *Oak Forest Products, Inc. v. Hiscock & Barclay, et al*, Case No. 12-46-CA – Metzger, now pending in the Circuit Court in and for Martin County, Florida, and requests that this case proceed in this Court as an action properly removed to it, and that this Court make such further orders as are just and equitable.

Dated: March 21, 2012

David P. Hartnett

David Hartnett

Florida Bar No. 946631

dhartnett@hinshawlaw.com

HINSHAW & CULBERTSON LLP

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Miami, Florida 33156-2741

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Facsimile: 305-577-1063

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel listed below. A courtesy copy has also been sent via mail and electronic mail as well to counsel listed below.

By: *David P. Hartnett*

David P. Hartnett

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I. (a) PLAINTIFFS
OAK FOREST PRODUCTS, INC.

DEFENDANTS
HISCOCK & BARCLAY, LLP and THOMAS R. FITZGERALD

County of Residence of First Listed Defendant : New York
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)
David P. Hartnett, Esquire
Hinshaw & Culbertson, LLP
9155 So. Dadeland Blvd, #1600,
Miami, FL 33156
Phone: 305 358-7747

| III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) | | | | | |
|---|---------------------------------------|---------------------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

| CONTRACT | | TORTS | | FORFEITURE/PENALTY | | BANKRUPTCY | | OTHER STATUTES | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|--|---|--|---|---|--|---|--|---|---|---|---|---|--|---|---|--|--|--|--|--|---|--|--|---|--|--|--|---|---|--|--|---|--|--|---|--|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 196 Franchise | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| REAL PROPERTY | | CIVIL RIGHTS | | PRISONER PETITIONS | | LABOR | | SOCIAL SECURITY | | FEDERAL TAX SUITS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 443 Housing/ Accommodations | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | <input type="checkbox"/> 440 Other Civil Rights | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PERSONAL INJURY | | PERSONAL INJURY | | PERSONAL PROPERTY | | IMMIGRATION | | PROPERTY RIGHTS | | OTHER STATUTES | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 362 Personal Injury— Med. Malpractice | <input type="checkbox"/> 365 Personal Injury — Product Liability | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 462 Naturalization Application | <input type="checkbox"/> 463 Habeas Corpus — Alien Detainee | <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 400 State Reapportionment | <input type="checkbox"/> 410 Antitrust | <input type="checkbox"/> 430 Banks and Banking | <input type="checkbox"/> 450 Commerce | <input type="checkbox"/> 460 Deportation | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations | <input type="checkbox"/> 480 Consumer Credit | <input type="checkbox"/> 490 Cable/Sat TV | <input type="checkbox"/> 810 Selective Service | <input type="checkbox"/> 850 Securities/Commodities/ Exchange | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 | <input type="checkbox"/> 890 Other Statutory Actions | <input type="checkbox"/> 891 Agricultural Acts | <input type="checkbox"/> 892 Economic Stabilization Act | <input type="checkbox"/> 893 Environmental Matters | <input type="checkbox"/> 894 Energy Allocation Act | <input type="checkbox"/> 895 Freedom of Information Act | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| FORFEITURE/PENALTY | | LABOR | | IMMIGRATION | | LABOR | | SOCIAL SECURITY | | FEDERAL TAX SUITS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 640 R.R. & Truck | <input type="checkbox"/> 650 Airline Regs. | <input type="checkbox"/> 660 Occupational Safety/Health | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 880 Other Statutory Actions | <input type="checkbox"/> 891 Agricultural Acts | <input type="checkbox"/> 892 Economic Stabilization Act | <input type="checkbox"/> 893 Environmental Matters | <input type="checkbox"/> 894 Energy Allocation Act | <input type="checkbox"/> 895 Freedom of Information Act | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice | <input type="checkbox"/> 950 Constitutionality of State Statutes | | | | | | | | | | | |

V. ORIGIN (Place an "X" in One Box Only)

| | | | | | | |
|--|--|--|---|--|---|--|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|--|--|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC §§ 1332 (a)(1), 1338(a) and 28 U.S.C. 1441 and 1446
Legal Malpractice arising from Patent Law

VII. REQUESTED IN COMPLAINT: _____ **CHECK IF THIS IS A CLASS ACTION DEMAND \$** _____ **CHECK YES only if demanded in complaint:**
JURY DEMAND: ☒ Yes ☐ No

(See instructions):

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

| RECEIPT # | AMOUNT | APPLYING IFP | JUDGE | MAG. JUDGE |
|-----------|--------|--------------|-------|------------|
|-----------|--------|--------------|-------|------------|

JS 44 Reverse (Rev. 12/07)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.